

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHWEST REGIONAL OFFICE

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION – ORDER BY CONSENT ISSUED TO JEWELL SMOKELESS COAL CORPORATION

Registration No. 10818

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309, and -1316, between the State Air Pollution Control Board and Jewell Smokeless Coal Corporation, regarding Jewell Smokeless Coal Corporation, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permits and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1301.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means the Jewell Smokeless Coal Corporation facility located at Route 460 & 638, Vansant, in Buchanan County, Virginia.
6. "FCE" means a full compliance evaluation by DEQ staff.

7. "Jewell Smokeless Coal Corporation" means Jewell Smokeless Coal Corporation, a corporation authorized to do business in Virginia and its affiliates, partners and subsidiaries. Jewell Smokeless Coal Corporation is a "person" within the meaning of Va. Code § 10.1-1300.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
10. "NSR Permit" means a New Source Review Permit to operate a coal preparation facility which was issued under the Air Pollution Control Law and the Regulations to Jewell Smokeless Coal Corporation, effective October 11, 2012.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 chapters 10 through 80.
12. "SOP" means a State Operating Permit to operate a coal preparation facility which was issued under the Air Pollution Control Law and the Regulations to Jewell Smokeless Coal Corporation, effective September 6, 2011.
13. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.
16. "VEE" means a Visible Emissions Evaluation, as determined by EPA Method 9 (see 40 CFR 60, Appendix A).
17. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Facts and Conclusions of Law

1. Jewell Smokeless Coal Corporation owns and operates the Facility in Buchanan County, Virginia.
2. The Facility is the subject of the NSR Permit and SOP which allows the company to operate the coal preparation facility.
3. On January 29, 2013, Department staff received notification of start up for the coal fines reclaim circuit stating the actual date of start-up was January 5, 2013.
4. On August 29, 2013, Department staff conducted a FCE at the Facility for

compliance with the requirements of the Virginia Air Pollution Control Law, the NSR Permit, the SOP and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:

- a. The facility was not adequately controlling fugitive dust from stockpiled dried coal while loading to tandem trucks.
 - b. The facility was not keeping the area in front of the raw coal truck dump adequately wet to control fugitive dust.
 - c. The facility was not maintaining the required records for the NSPS equipment.
 - d. The facility was not maintaining a logbook for NSPS equipment subject to Subpart Y (after May 27, 2009).
 - e. The facility failed to provide written start up notification for the coal fines reclaim circuit (Ref #s 40A – 40P) within 15 days after such date.
 - f. The facility failed to provide written start up notification for the (2) coal belt conveyors (Ref #s 31 and 32) within 15 days after such date.
 - g. The facility failed to conduct VEEs on the coal fines reclaim circuit (Ref #s 40A – 40P) no later than 180 days after start of operations.
 - h. The facility failed to conduct VEEs on the (2) belt conveyors (Ref #s 31 and 32) no later than 180 days after start of operations.
5. Condition No. 5 of the SOP states, "...dust emission controls shall include the following or equivalent as a minimum: a. Dust from all material handling, crushers, screens, transfers..., loadouts and traffic areas shall be controlled by wet suppression or equivalent...; b. All material being stockpiled shall be kept moist to control dust during storage and handling or covered at all times to minimize emissions..."
6. Condition No. 6 of the NSR Permit states, "Fugitive emission controls shall include the following, or equivalent, as a minimum: a. Dust from...material handling, screens, crushers, load-outs, and traffic areas shall be controlled by wet suppression or the processing of wet coal (as approved by DEQ)...; b. All material being stockpiled shall be kept adequately moist to control dust during storage and handling or covered at all times to minimize emissions..."
7. 9 VAC 5-80-850 requires that, "A. A permit may be granted pursuant to this article if it is shown to the satisfaction of the board that the following standards and conditions will be met: 1. The stationary source or emissions unit shall operate without causing a violation of the applicable provisions of regulations of the board;..."

8. 9 VAC 5-50-20 requires that, "...E. At all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the board, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source
9. 9 VAC 5-50-90 requires that, "During...operation phase of a stationary source or any other building, structure, facility or installation, no owner or other person shall cause or permit any materials or property to be handled, transported, stored, used, constructed, altered, repaired or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne...2. Application of asphalt, water, or suitable chemicals on dirt roads, materials stockpiles and other surfaces which may create airborne dust; the paving of roadways and the maintaining of them in a clean condition..."
10. 9 VAC 5-50-260 requires that, "No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of emissions limitations representing best available control technology, as reflected in any term or condition that may be placed upon the minor NSR permit approval for the facility..."
11. Condition No. 13 of the NSR Permit states, "...the NSPS equipment... shall be operated in compliance with the requirements in 40 CFR 60, Subpart Y..."
12. 9 VAC 5-50-410 requires that, "Designated standards of performance...Subpart Y – Coal Preparation and Processing Plants. 40 CFR 60.250 through 40 CFR 60.258..."
13. Condition No. 14 of the NSR Permit states, "The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit...These records shall include,...e. A logbook for NSPS equipment subject to Subpart Y..."
14. 9 VAC 5-50-50 requires that, "Any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the board of the following:...F. The owner of a stationary source shall keep records as necessary to determine its emissions..."
15. Condition No. 15 of the NSR Permit states, "The permittee shall furnish written notification to the Director, Southwest Regional Office of:...b. The actual start-up dates, within 15 days after such date(s), of:... ii. The coal fines reclaim circuit (Ref. Nos. 40A through 40P); and iii. Belt conveyors Nos. 31 and 32..."

15. Condition No. 15 of the NSR Permit states, "The permittee shall furnish written notification to the Director, Southwest Regional Office of:...b. The actual start-up dates, within 15 days after such date(s), of:... ii. The coal fines reclaim circuit (Ref. Nos. 40A through 40P); and iii. Belt conveyors Nos. 31 and 32..."
16. 9 VAC 5-80-1180 requires that, "...Minor NSR permits will contain, but need not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:...8. Reporting of recordkeeping requirements, or both...10. Other requirements as may be necessary to ensure compliance with the applicable regulations."
17. Condition No. 18 of the NSR Permit states, "Visible Emission Evaluations (VEE) in accordance with 40 CFR Part 60, Appendix A, Method 9, shall be conducted by the permittee on the raw coal transfer and storage equipment (Ref Nos. 33 through 39), the coal fines reclaim circuit (Ref. Nos. 40A through 40P), and belt conveyors Nos. 31 and 32... The evaluations shall be performed ...in no event later than 180 days after start-up..."
18. 9 VAC 5-50-30 requires that, "Performance tests for new or modified sources shall be conducted and reported and data shall be reduced as set forth in this chapter and the test methods and procedures contained in each applicable subpart listed in 9VAC5-50-410..."
19. Condition No. 21 of the NSR Permit states, "The permittee shall maintain in a logbook (written or electronic) on-site in accordance with 40 CFR 60.258 (a)..."
20. 9 VAC 5-170-160(A) - (Conditions on Approvals) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in part: "The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits."
21. Va. Code § 10.1-1322(A) gives the Department the authority to issue, amend, revoke or terminate and reissue permits, and failure to comply with any condition of a permit is considered a violation of the Air Pollution Control Law.
22. On September 11, 2013, Department staff received electronic correspondence from Jewell Smokeless Coal Corporation for an amended start up notification which stated the actual startup date for the coal fines reclaim circuit (Ref #s 40A – 40P) was January 7, 2013 and the actual startup date for the belt transfer system (Ref #s 31 and 32) was November 30, 2012.

24. On September 26, 2013, DEQ sent written correspondence to Jewell Smokeless Coal Corporation to allow for VEE testing prior to October 17, 2013 as schedules and conditions allowed.
25. On September 30, 2013, based on the notifications submitted by Jewell Smokeless Coal Corporation on January 29, 2013, September 11, 2013, and September 17, 2013 and the August 29, 2013 FCE, the Department issued a Notice of Violation No. ASWRO8794 to Jewell Smokeless Coal Corporation for the violations described in paragraph C(4) through C(19) and C(22) through C(23), above.
26. On October 3, 2013, Department staff received electronic correspondence from Jewell Smokeless Coal Corporation stating VEE testing would be conducted beginning on October 7, 2013.
27. On October 15, 2013, Jewell Smokeless Coal Corporation contacted DEQ staff electronically in response to the NOV.
28. On October 22, 2013, Department staff received an electronic copy of the VEE testing report from Jewell Smokeless Coal Company. The VEEs were completed on October 8 through October 9, 2013 at the Facility.
29. On November 1, 2013, Department staff met with representatives of Jewell Smokeless Coal Corporation to discuss the violations.
30. Based on the results of the August 29, 2013 FCE, the October 15, 2013 response, and the November 1, 2013 meeting, the Board concludes that Jewell Smokeless Coal Corporation has violated Condition 5 of the SOP, Condition 6, 13-15, 18 and 21 of the NSR Permit, 9 VAC 5-50-20, 9 VAC 5-50-30, 9 VAC 5-50-50, 9 VAC 5-50-90, 9 VAC 5-50-260, 9 VAC 5-50-410, 9 VAC 5-80-850 and 9 VAC 5-80-1180 as described in paragraphs C(5) through C(19), above.
31. In order for Jewell Smokeless Coal Corporation to complete its return to compliance, DEQ staff and representatives of Jewell Smokeless Coal Corporation have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Jewell Smokeless Coal Corporation and Jewell Smokeless Coal Corporation agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$8,559 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Jewell Smokeless Coal Corporation shall include its Federal Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Jewell Smokeless Coal Corporation shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Jewell Smokeless Coal Corporation for good cause shown by Jewell Smokeless Coal Corporation, or on its own motion pursuant to the Administrative Process Act Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified in Section C of this Order and NOV No. ASWRO8794 dated September 30, 2013. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Jewell Smokeless Coal Corporation neither admits or denies the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Jewell Smokeless Coal Corporation consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Jewell Smokeless Coal Corporation declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to modify, rewrite, amend, or enforce this Order.

6. Failure by Jewell Smokeless Coal Corporation to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Jewell Smokeless Coal Corporation shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Jewell Smokeless Coal Corporation shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Jewell Smokeless Coal Corporation shall notify DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition listed above, which the parties intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.


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9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
 10. This Order shall become effective upon execution by both the Director or his designee and Jewell Smokeless Coal Corporation. Nevertheless, Jewell Smokeless Coal Corporation agrees to be bound by any compliance date, which precedes the effective date of this Order.
 11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Jewell Smokeless Coal Corporation has completed all of the requirements of the Order.
- b. Jewell Smokeless Coal Corporation petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order, or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Jewell Smokeless Coal Corporation.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Jewell Smokeless Coal Corporation from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Jewell Smokeless Coal Corporation and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Jewell Smokeless Coal Corporation certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Jewell Smokeless Coal Corporation to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Jewell Smokeless Coal Corporation.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Jewell Smokeless Coal Corporation voluntarily agrees to the issuance of this Order.

And it is ORDERED this 22 day of January, 2014



Allen J. Newman, P.E., Regional Director
Department of Environmental Quality

Jewell Smokeless Coal Corporation voluntarily agrees to the issuance of this Order.

Date: 1-14-14 By: Wayne Hawley, Vice President
Wayne Hawley,
Jewell Smokeless Coal Corporation

Commonwealth of Virginia

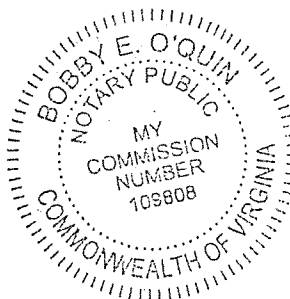
City/County of Buchanan

The foregoing document was signed and acknowledged before me this 14 day of
January, 2014, by Wayne Hawley who is
Vice President of Jewell Smokeless Coal Corporation,
on behalf of the corporation.

Bobby E. O'Quin
Notary Public

109808
Registration No.
Nov. 30, 2015
My commission expires:

Notary Seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Jewell Smokeless Coal Corporation:

- a. Within 30 days of the effective date of the Order, shall submit to DEQ a compliance plan detailing fugitive dust control measures specifically addressing control of fugitive dust from stockpiled dried coal, load-outs and roadways at the facility.
- b. Within 30 days of the effective date of the Order, shall submit to DEQ a copy of the logbook for NSPS equipment subject to Subpart Y in accordance with 40 CFR 60.258(a).

2. Certification of Documents and Reports

In accordance with 9 VAC 5-20-230(A), in all documents or reports, including, without limitation, the SEP Completion Report, submitted to DEQ pursuant to this Consent Order, Jewell Smokeless Coal Corporation, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

3. DEQ Contact

Unless otherwise specified in this Order, Jewell Smokeless Coal Corporation shall submit all requirements of Appendix A of this Order to:

Crystal C. Bazyk
Enforcement and Air Compliance/Monitoring Manager
VA DEQ – SWRO
355-A Deadmore Street
Abingdon, VA 24210
(276) 676-4829
(276) 676-4899crystal.bazyk@deq.virginia.gov